

OFFENDER EDUCATION PROGRAMS FOR ALCOHOL AND DRUG-RELATED OFFENSES

Administrative Rules of the Texas Department of Licensing and Regulation

16 Texas Administrative Code, Chapter 90

(Effective November 1, 2017)

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SUBCHAPTER A. GENERAL PROVISIONS.

90.1. Authority. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

This chapter is promulgated under the authority of Occupations Code, Chapter 51; Alcoholic Beverage Code, §106.115 (Alcohol Education Program for Minors); Transportation Code, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program).

90.10. Definitions. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly states otherwise.

- (1) Administrator--An individual who is a certified Instructor in good standing and who is authorized to act on behalf of the certified Provider in all respects relating to compliance with this chapter.
- (2) Alcohol Education Program for Minors--An educational program provided to minors pursuant to Alcoholic Beverage Code §106.115 that is designed to:
 - (A) present information to participants on the effects of alcohol upon behavior and upon the lives of persons who use alcohol;
 - (B) help participants identify their own drinking patterns or problems;
 - (C) educate participants about the laws relating to possession, consumption, and purchase of alcoholic beverages and laws relating to minors under the influence of alcohol; and
 - (D) assist participants in developing a plan to reduce the probability of involvement in future alcohol-related illegal behavior or detrimental activity.
- (3) Annual Reporting Period--The period of time beginning September 1 of each year and ending August 31 of the following year.
- (4) Branch Office/Site--An additional Offender Education Program/Provider site that is located in the same or adjacent county as the headquarters of a certified Offender Education Provider.
- (5) Certificates of Course Completion--Uniform, serially numbered certificates of completion required and designated by the department to be used by certified Providers for dissemination to Participants upon successful completion of an Offender Education Program.
- (6) Commission--The Texas Commission of Licensing and Regulation.
- (7) Continuing Education Hour--At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug or alcohol-related topics, as applicable to the particular Instructor certification.
- (8) Continuing Education Seminar--A department-sponsored continuing education seminar, class or course for an applicable Offender Education Instructor certification.
- (9) Course Records--Offender Education participants' personal data forms, pre- and post-tests, self-assessments, screening instrument(s), homework assignments, action plans, and any other written material required or used in the offender education class instruction.

- (10) Course Roster--A form used to record data on all offender education participants enrolled in the course and to record attendance data on those participants at each class throughout the course.
- (11) Course Size--The number of Offender Education participants in a course, to be calculated according to the number of participants officially enrolled in the course or the greatest number of participants in attendance in any class within a course, whichever is greater.
- (12) Department--The Texas Department of Licensing and Regulation.
- (13) Drug Offender--A person whose license is suspended under Transportation Code §521.372 (relating to Automatic Suspension; License Denial) and any amendments thereto, for final conviction of an offense described in that section.
- (14) Drug Offender Education Program--An educational program provided to Drug Offenders pursuant to Transportation Code §521.374 that is designed to:
 - (A) educate participants on the dangers of drug use/abuse and associated illegal activities;
 - (B) provide information on the effects of drug use/abuse and related illegal activities on personal, family, social, economic and community life;
 - (C) assist participants in evaluating their own abusive patterns connected with their use of drugs or associated illegal activities; and
 - (D) assist participants in developing a plan for positive lifestyle changes to reduce chances of being involved in future drug use/abuse and related illegal behaviors.
- (15) DWI--An offense relating to driving or operating a motorized vehicle while intoxicated, as described in Penal Code §§49.04 - 49.08, relating to Intoxication Offenses.
- (16) DWI Education Program--An educational program provided to persons convicted of a DWI offense and placed on community supervision pursuant to Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) that is designed to:
 - (A) present information on the effects of alcohol and other drugs on driving skills;
 - (B) help participants identify their own individual drinking or drugged driving patterns; and
 - (C) assist participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.
- (17) DWI Intervention Program--An educational program provided to persons punished under Penal Code §49.09, relating to Enhanced Offenses and Penalties, pursuant to Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) that is designed to:
 - (A) educate participants about chemical dependency and the problems associated with chemical dependency;
 - (B) provide intensive instruction about specific actions participants can take to prevent future DWI offenses; and
 - (C) instruct participants about methods and ways to make necessary lifestyle changes in order to prevent alcohol/drug-related problems in other areas of the participants' lives.

- (18) Executive Director--The executive director of the department.
- (19) Instructor Applicant--A term describing an individual from the period when the individual submits an application for admission into an Instructor training course until the point where certification is granted or denied.
- (20) Instructor Certification Period--The period of time beginning with the date Instructor certification was granted to instruct an applicable Offender Education curriculum, and ending two years after the date the certification was issued.
- (21) Instructor Training Class--A session of an Instructor training course.
- (22) Instructor Training Course--The complete series of Instructor training class sessions.
- (23) Minor--A person under the age of 21 years.
- (24) Offender Education Class--A session of an Offender Education course.
- (25) Offender Education Course--The complete series of Offender Education class sessions.
- (26) Offender Education Program (Program)--An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.
- (27) Offender Education Provider (Provider)--An individual or entity holding certification of approval from the department to offer or provide the Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.
- (28) Participant--An individual who attends a department-approved Offender Education Program.
- (29) Program/Provider Headquarters--The primary administrative center of a certified Offender Education Provider that is identified as the business address in the Provider's application.
- (30) Screening Instrument--A written device approved by the department and required to be administered to each Program participant for the purpose of:
 - (A) identifying indicators of a potential substance abuse problem; and
 - (B) making recommendations for further evaluation, where indicated by the screening instrument.

SUBCHAPTER B. INSTRUCTOR REQUIREMENTS.

90.20. Instructor Certification Required. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) An individual who teaches any Offender Education Program must have a current Instructor certification issued by the department, and the Instructor certification must be for the type of Offender Education Program the individual is teaching.
- (b) A certified Instructor must instruct only for an Offender Education Provider that holds a program certification for the particular type of Offender Education Program.
- (c) A certified Instructor must utilize only the Offender Education curriculum approved for the particular type of Offender Education Program for which the Instructor is certified.
- (d) A certified Instructor must comply with all requirements of this chapter.

90.21. Instructor Certification – Eligibility Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) To be eligible to become certified as an Instructor for a DWI Education Program, Drug Offender Education Program, or Alcohol Education Program for Minors, an individual must:
 - (1) have a minimum of an associate's degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, health, or traffic safety;
 - (2) be a licensed chemical dependency counselor, registered counselor intern, licensed social worker, licensed professional counselor, licensed professional counselor intern, certified teacher, licensed psychologist, licensed physician or psychiatrist, probation or parole officer, adult or child protective services worker, licensed vocational nurse, or registered nurse; or
 - (3) have at least one year of documented experience in case management or education relating to substance abuse and/or mental health.
- (b) To be eligible to become certified as an Instructor for a DWI Intervention Program, an individual must:
 - (1) either:
 - (A) be a licensed chemical dependency counselor, registered counselor intern, licensed social worker, licensed professional counselor, licensed professional counselor intern, licensed psychologist, licensed physician or psychiatrist; or
 - (B) possess, at a minimum, an associate's degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, or health; and
 - (2) have a minimum of two years of documented experience providing direct client services directly related to the applicable internship, licensing, or education documented under subsection (a)(1), to persons with substance abuse problems or mental disorders.

90.22. Instructor Certification – Instructor Training Course and Examination. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) To become a certified Instructor for a particular type of Offender Education Program, an individual must successfully complete the applicable department-approved and sponsored Offender Education Instructor training course.
- (b) An Instructor Applicant must pay the department's third party contractor an Instructor training fee after acceptance into a specific training course.
- (c) An Instructor Applicant must attend all classes of the instructor training course in their entirety.
- (d) An Instructor Applicant must achieve passing scores on both the participant teaching presentation and the written exam to successfully complete the Instructor training course.
- (e) Any Instructor Applicant who does not achieve a passing score on either the participant teaching presentation or the written exam at the Instructor training course will have one additional opportunity to pass the written exam or participant teaching presentation, as applicable, within 30 days after the date of completing the instructor training course, or as otherwise directed by the department.
- (f) If the Instructor Applicant does not achieve a passing score on the applicable written exam or participant teaching presentation the second time, the Instructor Applicant will not have successfully completed the Instructor training course and must reapply for the applicable training and certification.

- (g) Any Instructor Applicant who does not successfully complete the Instructor training course, including any permitted retesting, will be required to return the curriculum manual to the department by no later than the end of the class session at which unsuccessful completion of the course is determined or at the time of retest, whichever is later.

90.23. Instructor Certification – Application. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) To apply for an Instructor certification for a particular type of Offender Education Program, an individual must:
 - (1) submit a completed application on a department-approved form for the applicable Offender Education Program;
 - (2) submit proof of meeting the eligibility requirements under §90.21; and
 - (3) successfully pass a criminal history background check by the department.
- (b) There is no fee paid to the department to apply for the Instructor certification.
- (c) If the department determines that the Instructor Applicant has met the requirements under subsection (a), the department will notify the Instructor Applicant that the Instructor Applicant has been accepted to enroll in the department-approved and sponsored Offender Education Instructor training course for the applicable Offender Education Program.
- (d) Upon successful completion of the department-approved and sponsored Offender Education Instructor training course, including testing and any retesting, and absent any other reasons for denial, the Instructor Applicant will receive certification from the department as an Instructor for the applicable Offender Education Program.

90.24. Instructor Certification Term; Renewals. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Instructor certifications for all Offender Education Programs are valid for two years and may be renewed. An Instructor certification will expire two years after the date the certification was issued.
- (b) To renew an Instructor's certification, the Instructor must:
 - (1) submit a completed renewal application on a department-approved form;
 - (2) complete the teaching and the continuing education requirements for the applicable Offender Education Program curriculum specified in §90.25;
 - (3) comply with the continuing education audit process described under §90.26, if selected for an audit; and
 - (4) successfully pass a criminal history background check performed by the department.
- (c) There is no fee paid to the department to renew the instructor certification.
- (d) Absent any other reasons for denial, the department will issue a renewal certification to an Instructor who has met all the requirements for renewal.
- (e) If an Instructor's certification expires prior to submission of a complete renewal application that demonstrates compliance with all renewal requirements, the Instructor must reapply and successfully complete the applicable initial Instructor Training Course again to become certified to instruct for the applicable Offender Education Program.

- (f) An Instructor may not instruct any Offender Education Programs with an expired Instructor certification.

90.25. Instructor Teaching and Continuing Education Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

(a) Drug Offender Education Instructor Requirements.

- (1) Each Drug Offender Education Instructor must teach a minimum of four complete Drug Offender Education courses and attend at least one department-sponsored Drug Offender Education Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.
- (2) If substantial intervening changes are made to the Drug Offender Education curriculum, or significant updates are required to curriculum material, Instructors for Drug Offender Education shall attend any additional department-sponsored Drug Offender Education Instructor continuing education seminar or special meeting regarding which the department sends them notice.
- (3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly drug-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.
- (4) Continuing education hours obtained in a department-sponsored Drug Offender Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(b) Alcohol Education Program for Minors Instructor Requirements.

- (1) Each Alcohol Education Program for Minors Instructor shall teach a minimum of four complete Alcohol Education Program for Minors courses and attend at least one department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.
- (2) If substantial intervening changes are made to the Alcohol Education Program for Minors curriculum, or significant updates are required to curriculum material, Instructors for Alcohol Education Program for Minors shall attend any additional department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar or special meeting regarding which the department sends them notice.
- (3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.
- (4) Continuing education hours obtained in a department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(c) DWI Education Instructor Requirements.

- (1) Each DWI Education Instructor shall teach a minimum of four complete DWI Education courses and attend at least one department-sponsored DWI Education Instructor continuing education seminar during the DWI Education Instructor's certification period, and each subsequent Instructor certification period.
 - (2) If substantial intervening changes are made to the DWI Education curriculum, or significant updates are required to curriculum material, Instructors for DWI Education shall attend any additional department-sponsored DWI Education Instructor continuing education seminar or special meeting regarding which the department sends them notice.
 - (3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.
 - (4) Continuing education hours obtained in a department-sponsored DWI Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.
- (d) DWI Intervention Instructor Requirements.
- (1) Each DWI Intervention Instructor shall teach a minimum of two complete DWI Intervention courses and attend at least one department-sponsored DWI Intervention Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.
 - (2) If substantial intervening changes are made to the DWI Intervention curriculum, or significant updates are required to curriculum material, Instructors for DWI Intervention shall attend any additional department-sponsored DWI Intervention Instructor continuing education seminar or special meeting regarding which the department sends them notice.
 - (3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.
 - (4) Team teaching, with no more than two certified instructors, may be counted towards the fulfillment of the teaching requirement.
 - (5) Continuing education hours obtained in a department-sponsored DWI Intervention Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.
- (e) An Instructor must pay a continuing education seminar fee for each Instructor certification to the department's third party contractor.

90.26. Instructor Continuing Education Audits-All Programs. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) The department shall employ an audit system for continuing education reporting. The instructor shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the instructor has been selected for audit.
- (b) The audit process shall be as follows.
 - (1) The department shall select for audit a random sample of instructors for each renewal month. Instructors will be notified of the continuing education audit when they receive their renewal documentation.
 - (2) If selected for an audit, the instructor shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the instructor's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.
 - (3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the instructor.
 - (4) An instructor who is selected for a continuing education audit may renew through the online renewal process, if available. However, the instructor will not be considered renewed until the required continuing education documents are received, accepted and approved by the department.
 - (5) Instructors will not be renewed until the continuing education requirements have been met.

90.27. Instructor Responsibilities. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) A certified Instructor is only authorized to instruct the particular type of Offender Education Program for which an Instructor certification is issued.
- (b) A certified Instructor may only instruct for an Offender Education Provider that holds the applicable program certification from the department.
- (c) A certified Instructor may only utilize the curriculum approved for the particular type of Offender Education Program for which the Instructor is certified.
- (d) Certified Instructors are required to report, in writing, any felony or misdemeanor conviction against themselves or other certified Instructors.
- (e) A certified Instructor must notify the department within 30 days of any change in the Instructor's name, address, telephone number, or e-mail address.
- (f) A certified Instructor must provide the Instructor's certification number and the Offender Education Program/Provider certification number to each participant and provide information regarding how to file a complaint with the department to each participant.

SUBCHAPTER C. PROGRAM/PROVIDER CERTIFICATION REQUIREMENTS.

90.30. Program/Provider Certification Requirement. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Any individual or entity seeking to offer, provide, or operate an Offender Education Program must have a current Offender Education Program certification of approval (certification) for the applicable program issued by the department.

- (b) The individual or entity holding a current Offender Education Program certification of approval (certification) from the department is a certified Offender Education Provider for the applicable program.
- (c) A certified Offender Education Program must be taught exclusively by Instructors certified to instruct the particular type of Offender Education Program.
- (d) A certified Offender Education Program must be conducted in accordance with, and as described in, the applicable Instructor manual authorized and approved by the department under §90.40.
- (e) A certified Offender Education Program must utilize only the curriculum approved for the particular type of Offender Education Program.
- (f) An approved Offender Education Program/Provider must comply with all requirements of this chapter.

90.31. Program/Provider Certification Application - Headquarters. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) An individual or entity seeking to obtain an Offender Education Program/Provider certification must:
 - (1) submit a completed Program application on a department-prescribed form;
 - (2) identify the certified Instructor who will act as Administrator; and
 - (3) submit the Program initial application fee specified under §90.80.
- (b) The Offender Education Program applicant shall notify the department in writing within 30 days of any change in Administrator, headquarters or branch site address, telephone number, e-mail address, and website address.
- (c) If an applicant has met all requirements for the applicable type of Offender Education Program, the department will issue a Program/Provider certification for the applicable type of Offender Education Program.
- (d) The certification becomes effective on the date the certification is issued and expires two years after the date of issuance.

90.32. Program/Provider Certification Application – Branch Sites and Other Locations. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Branch Sites--Same or Adjacent Counties.
 - (1) A Provider, who holds a current Offender Education Program certificate and who wants to offer the applicable Offender Education Program or Course at a location other than the headquarters, but in the same or adjacent county as the Program/Provider's headquarters, must submit:
 - (A) the branch site application on a department-approved form; and
 - (B) the branch site fee specified under §90.80.
 - (2) If approved, the department will then issue a certificate authorizing the Provider to offer the applicable Offender Education Program or Course at that approved branch site.
- (b) Non-Adjacent Counties.
 - (1) A Provider, who holds a current Offender Education Program certificate and who wants to offer

the applicable Offender Education Program or Course at a site that is not located in the same or adjacent county as the Program/Provider's headquarters, must submit:

- (A) a separate Program/Provider application on a department-approved form; and
 - (B) the initial Program/Provider application fee specified under §90.80.
- (2) The separate Program/Provider application shall designate a Program Administrator and Provider headquarters, and may establish branch sites in accordance with the provisions of this section.
- (3) If approved, the department will then issue a separate Program/Provider certification authorizing the Provider to offer the applicable course at that approved Program headquarters.
- (c) Changing/Moving Headquarters.
- (1) Same County. A Program/Provider requesting to move its headquarters to a new location in the same county as the current headquarters must submit:
- (A) a completed application on a department-approved form; and
 - (B) the moving headquarters (same county) fee specified under §90.80.
- (2) Different County. A Program/Provider requesting to move its headquarters to a new location that is not in the same county as the current headquarters must submit:
- (A) a separate completed Program/Provider application on a department-approved form; and
 - (B) the moving headquarters (different county) fee as specified under §90.80.

90.33. Program/Provider Certification Term; Renewal. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) An Offender Education Provider seeking renewal of its Program certification of approval shall submit:
- (1) a completed Program/Provider renewal application on a department-approved form; and
 - (2) the Program/Provider renewal fee specified under §90.80.
- (b) The renewal certification becomes effective on the date the certification is issued and expires two years after the date of issuance.
- (c) The department shall issue a renewal Program certification to a Program/Provider that has met all the requirements for renewal.
- (d) A Programs/Provider that fails to submit a complete renewal application and pay the renewal fee before the Program's/Provider's expiration date will no longer hold a current certification to provide the applicable educational program. The Program/Provider must reapply and submit an initial Program application and fee as required under §90.31 to obtain certification as an approved Offender Education Program/Provider.
- (e) The Offender Education Provider may not offer, provide or operate an Offender Education Program with an expired Program/Provider certification.
- (f) If a Program/Provider certification expires, then any branch site certifications to the Program/Provider headquarters also expire. Offender Education Programs may not be operated at branch sites if the Program/Provider certification for the headquarters has expired.

90.34. Program/Provider Certification – Change of Address and Providing Information. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) An Offender Education Program/Provider must notify the department in writing within 30 days of any change in the Program/Provider's headquarters or branch site address, telephone number, e-mail address, website address, or change in the Administrator or Instructor(s).
- (b) The Offender Education Program/Provider must provide the Program/Provider certification number and the Instructor certification number for the particular Program and course to each participant and provide information regarding how to file a complaint with the department to each participant.

SUBCHAPTER D. PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES.

90.40. Program Curriculum and Materials – All Programs. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Offender Education Programs shall use the most up-to-date version of the uniform curricula and of any screening instrument approved by the department.
- (b) The following curricula are approved for the applicable program:
 - (1) Alcohol Education Program for Minors -- the Alcohol Education Program for Minors Administrator/Instructor Manual;
 - (2) Drug Offender Education Program -- the Texas Drug Offender Education Program Administrator/Instructor Manual;
 - (3) DWI Education Program -- the Texas DWI Education Program Administrator/Instructor Manual; and
 - (4) DWI Intervention Program -- the Texas DWI Intervention Administrator/Instructor Program Manual.
- (c) Any supplemental media used in an Offender Education Program must have prior written approval from the department. The Offender Education Program seeking approval must demonstrate that it meets the following minimum conditions for approval of supplemental media:
 - (1) the Program must still use all media required by the applicable approved curriculum for each module;
 - (2) the Program, with use of the supplemental media, must exceed the minimum number of classes and hours of instruction required per course by the length of any supplemental media; and
 - (3) the content of any supplemental medium must relate directly to the objectives of the curriculum module in which it is used.

90.41. Program Curriculum and Rules – DWI Education Program. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Pursuant to Code of Criminal Procedure, Articles 42A.403 and 42A.405, the commission and the department shall jointly approve a DWI Education Program and rules with the Texas Department of Public Safety; the Traffic Safety Section of the Traffic Operations Division of the Texas Department of Transportation; and the Criminal Justice Assistance Division of the Texas Department of Criminal Justice.
- (b) Representatives from the agencies identified in subsection (a), are responsible for approving or

disapproving the educational program curriculum or curriculum changes, as set forth in the Texas DWI Education Program Administrator/Instructor Manual and required to be used by DWI Education Programs under §90.40, as well as any rules and rule changes proposed for publication relating to certification standards for DWI Education Programs and their Instructors.

- (c) For any proposed changes to the educational program curriculum or rules for the DWI Education Program, the department will notify the designated representatives from the agencies identified in subsection (a) and solicit input during the process to revise the educational program curriculum or during the rulemaking process.

90.42. Program Rules – Drug Offender Education Program. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Pursuant to Transportation Code §521.374, the department is responsible for approving a Drug Offender Program under rules adopted by the commission and the Texas Department of Public Safety (DPS).
- (b) Pursuant to Transportation Code §521.375, the commission and DPS are responsible for jointly adopting rules for the qualification and approval of providers of the Drug Offender Education Program.
- (c) For any proposed changes to the educational program rules for the Drug Offender Education Program, the department will notify the designated representatives from DPS and solicit input during the rulemaking process.

90.43. General Program and Course Requirements - All Programs. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) All Offender Education Programs must use the applicable curriculum approved in §90.40, including all required videos, slides or transparencies, participant workbooks, booklets, and other resources or written materials. The applicable curriculum must be presented in the prescribed manner and sequence.
- (b) All courses must be taught by a certified Instructor for the applicable Offender Education Program. Each Instructor must be physically present in the classroom with all of the participants for each class. A single Instructor must teach the entire course for all Offender Education Programs, with the exception of DWI Intervention Programs, which may allow team-teaching utilizing no more than two certified Instructors.
- (c) The Offender Education Program/Provider must provide the Program/Provider certification number and the Instructor certification number for the particular Program and course to each participant and provide information regarding how to file a complaint with the department to each participant.
- (d) Offender Education Programs must require participants to attend all class sessions within a course in the proper sequence.
- (e) The Program must make provisions for persons unable to read and/or speak English. All classes in a single course must be taught in the same language.
- (f) The Program must screen each participant and offer appropriate referral information to the participant, based upon the numerical score and accompanying referral recommendations on the approved Screening Instrument required to be administered. The Screening Instrument must be administered by the Administrator or course Instructor, or under their direct supervision.
- (g) The Administrator or course Instructor for each Offender Education Program must make available a current listing or roster of available chemical dependency counseling and treatment resources in the area to each participant whose numerical score and accompanying referral recommendations on the approved Screening Instrument required to be administered indicate a potential substance abuse problem requiring further evaluation.

- (h) All required registration, initial data collection, and administration of the Screening Instrument must be completed before commencement of the first class session.
- (i) At the end of each course, the course Instructor for each Offender Education Program must administer a participant course evaluation.
- (j) The course Instructor for all Offender Education Programs shall conduct an exit interview with each participant, as outlined in the applicable educational program manual.

90.44. Additional Course Requirements for the Drug Offender Education Program. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) In addition to the requirements under §90.43, each Drug Offender Education Program must:
 - (1) conduct the prescribed drug offender education course a minimum of two times during each annual reporting period;
 - (2) provide a minimum of 15 hours of class instruction per course;
 - (3) provide a minimum of five class sessions of instruction per course;
 - (4) conduct class sessions which are not longer than three hours in length, and not shorter than two hours in length;
 - (5) conduct no more than one class session per day; and
 - (6) conduct courses and each class with no more than 30 participants and with no fewer than three participants.
- (b) Each Drug Offender Education Program must administer and evaluate pre- and post-course test instruments for each participant.

90.45. Additional Course Requirements for the Alcohol Education Program for Minors. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) In addition to the requirements under §90.43, each Alcohol Education Program for Minors must:
 - (1) conduct the prescribed alcohol education course a minimum of two times during each annual reporting period;
 - (2) provide a minimum of six hours of class instruction per course;
 - (3) conduct class sessions which are not longer than three hours in length;
 - (4) conduct no more than one class session per day; and
 - (5) conduct courses and each class with no more than 25 participants and with no fewer than three participants (not including parents and guardians).
- (b) The Program must administer and evaluate pre- and post-course test instruments for each participant.

90.46. Additional Course Requirements for the DWI Education Program. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) In addition to the requirements under §90.43, each DWI Education Program must:

- (1) conduct the prescribed DWI education course a minimum of two times during each annual reporting period;
 - (2) provide a minimum of 12 hours of instruction per course;
 - (3) provide no more than four hours of instruction in any one day; and
 - (4) conduct courses and each class with no more than 30 participants and with no fewer than three participants.
- (b) The Program must administer and evaluate pre- and post-course test instruments for each participant.
 - (c) Within ten working days after completion of the course, the Instructor must notify the appropriate community supervision and corrections department and forward a copy of the certificate of completion to the Texas Department of Public Safety (DPS).
 - (d) If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the Instructor must, by no later than the participant's deadline:
 - (1) forward a copy of the certificate of completion to DPS; and
 - (2) notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

90.47. Additional Course Requirements for DWI Intervention Programs. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) In addition to the requirements under §90.43, each DWI Intervention Program must:
 - (1) conduct the prescribed DWI intervention course a minimum of one time during each annual reporting period;
 - (2) provide a minimum of 30 hours of class instruction per course;
 - (3) conduct class sessions which are not longer than three hours in length and not shorter than two hours in length;
 - (4) conduct no more than one class session per day;
 - (5) conduct no more than two class sessions per week;
 - (6) conduct courses and each class with no more than 15 participants and with no fewer than three participants;
 - (7) provide make-up class sessions for a maximum of two excused absences; and
 - (8) conduct a minimum of two sessions with each participant individually and an individual exit interview with each participant.
- (b) Within ten working days after completion of the course the Instructor must notify the appropriate community supervision and corrections department and forward a copy of the certificate of completion to Texas Department of Public Safety (DPS).
- (c) If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the Instructor must, by no later than the participant's deadline:

- (1) forward a copy of the certificate of completion to DPS; and
- (2) notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

90.48. Classroom Facilities and Equipment. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Offender Education Programs and Instructors must conduct all classes in appropriate classroom facilities and settings which are in compliance with the Americans with Disabilities Act, 42 United States Code, §12101 et seq. The classrooms and setting shall be conducive to study and shall have:
 - (1) a sufficient number of tables or desks to accommodate each participant without crowding;
 - (2) a number of seats sufficient to seat each participant;
 - (3) sufficient lighting;
 - (4) appropriate acoustics and climate control; and
 - (5) Classroom facilities must be easily accessible to all class participants.
- (b) Offender Education Programs/Providers and Instructors may not conduct class sessions at a personal residence.
- (c) Audiovisual equipment must be in good working order and in good condition for use in class instruction.
- (d) Television monitors and projection screens must be at least 25 inches diagonal and videos and slides/transparencies must be maintained in a high quality condition.
- (e) Slides/transparencies and videos must be displayed in a manner which produces a clear image and allows all participants to have an unobstructed view.
- (f) Offender Education Programs/Providers and Instructors must ensure that no portion of any Offender Education course is videotaped or otherwise recorded or broadcast.

90.49. Course Completion Certificates for Participants. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) All certified Offender Education Programs must provide each participant who successfully completes the applicable Offender Education Program, within five days of successful completion, a serially numbered uniform certificate of course completion required and designated for such use by the department. If an exit interview is required, the course may not be deemed to be successfully completed and a certificate of course completion may not be issued until the exit interview has been conducted.
- (b) All approved Offender Education Programs must maintain an ascending numerical accounting record of all issued and un-issued certificates.
- (c) The applicable Offender Education Program, Administrator, and course Instructor are responsible for ensuring that an original certificate of completion is issued to each participant who successfully completes the course. All Offender Education Programs must retain one copy for the Program's files.
- (d) Each Offender Education Program must develop procedures for issuing duplicate certificates.
 - (1) The procedures must ensure that the duplicate certificate is a new certificate, is clearly identified as being a duplicate of a previously-issued certificate, and includes the control number of the previously-issued certificate.

- (2) The Offender Education Program must indicate at the bottom of the Course Roster on which the participant's original control number was recorded that a duplicate certificate was issued and shall show the new control number and date of issuance for the duplicate certificate.
- (e) If an Offender Education Program/Provider allows its certification to expire or otherwise loses its certification, it must, within 30 days after expiration or other termination of the certification, return all unused certificates of completion to the department.
- (f) Additional Requirements for DWI Education Programs and DWI Intervention Programs.
 - (1) Within ten working days of course completion, the DWI Education Program Instructor or the DWI Intervention Program Instructor, as applicable, must forward a copy of the certificate of completion to the Texas Department of Public Safety (DPS) and notify the appropriate community supervision and corrections department.
 - (2) If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program Instructor or DWI Intervention Program Instructor, as applicable, must, by no later than the participant's deadline:
 - (A) forward a copy of the certificate of completion to DPS; and
 - (B) notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

SUBCHAPTER E. PROGRAM REQUIREMENTS—ADMINISTRATION AND OTHER RESPONSIBILITIES.

90.50. Program Administration. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Compliance. An Offender Education Program/Provider is responsible for all aspects of Program compliance with this chapter, including any noncompliance related to the conduct of a Program Instructor, Administrator, owner, or other personnel.
- (b) Program Administrator.
 - (1) Each Offender Education Program/Provider must designate an Administrator who must ensure the Program's/Provider's compliance with the administrative requirements of this section and the proper operation of the Program in compliance with all requirements of this chapter.
 - (2) Nothing in this subsection shall limit the concurrent responsibility of an Administrator or Instructor for that individual's own conduct.
 - (3) An Administrator must be in good standing as a certified Instructor for the applicable program and must meet all of the requirements of program Instructors.
 - (4) An Offender Education Program that does not have a currently certified Administrator on record with the department will not be authorized to offer the applicable Offender Education course until the Offender Education Program designates a new, currently certified Administrator and provides written notice to the department of the designation.
- (c) Course Fees and Schedules.
 - (1) An Offender Education Program/Provider must set definite and reasonable course fees. Course fees may not be assessed on a class-by-class basis.

- (2) An Offender Education Program must maintain, and make available upon request, written course schedules that include the dates, times, and locations where courses will be held, and the fees charged by the Program.
 - (3) An Offender Education Program must schedule at least one course each quarter.
- (d) Program Records and Audits.
 - (1) An Offender Education Program/Provider, and its Administrator and Instructors, must maintain, for at least three years, documentation necessary to demonstrate compliance with all applicable requirements of this chapter. This requirement applies to records and documentation created on or after the effective date of this subsection.
 - (2) Upon request, the Program/Provider, its Administrator, and Instructors must make available or provide to the department at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, unless otherwise prohibited by law.
- (e) Change in Program Information. An Offender Education Program/Provider must notify the department in writing within 30 days of any change in the Provider's headquarters or branch site address(es), telephone number, e-mail address, website address, or change in the Administrator or Instructor(s).
- (f) Providing Information to Course Participants. The Offender Education Program/Provider must provide to each course participant:
 - (1) the Program/Provider certification number;
 - (2) the Instructor certification number; and
 - (3) information regarding how to file a complaint with the department.
- (g) Referrals.
 - (1) If an Offender Education Program or Instructor is in a position to or does provide Offender Education referral information to an individual who is required to attend an Offender Education course, the Offender Education Program or Instructor providing the referral information:
 - (A) must provide the department's phone number and web address;
 - (B) must advise the individual concerning the individual's choice to attend any Offender Education Program certified by the department; and
 - (C) may not require or otherwise attempt to influence an individual to choose a particular Offender Education Program.
 - (2) This subsection does not prevent a Program or Instructor from providing information specific to the Program or to the Instructor's own Program or course when a prospective participant is specifically requesting information about that particular Program or the Instructor's own Program or course.
- (h) Complaint Procedures and Notice.
 - (1) An Offender Education Program/Provider must establish procedures to resolve participant complaints.
 - (2) An Offender Education Program/Provider, Administrator, and course Instructor must provide participants with a notice or documentation that contains the name, current mailing address,

current telephone number, and website address of the department and a statement that any complaints against the Program or any of its personnel may be directed to the department.

90.51. Recordkeeping Regarding Course Participants. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) All Offender Education Programs/Providers must collect and maintain the following required information on each course participant:
 - (1) name;
 - (2) street address, city, and zip code;
 - (3) e-mail address;
 - (4) date of birth;
 - (5) gender;
 - (6) driver's license number (if any);
 - (7) grade in school or educational level achieved;
 - (8) present employment;
 - (9) date of enrollment;
 - (10) date of course completion;
 - (11) dates and attendance record for each class session of the course completed;
 - (12) certificate of completion number; and
 - (13) criminal case cause number.
- (b) In addition to the requirements in subsection (a), Drug Offender Education Programs and DWI Education Programs must collect and maintain the following required information on each course participant:
 - (1) individual pre- and post-course test scores;
 - (2) average pre- and post-course test scores of course participants;
 - (3) aggregate percent of knowledge increase between pre- and post-course test scores;
 - (4) each course participant's screening instrument;
 - (5) each course participant's screening instrument indicator code/score; and
 - (6) any referral recommendations made to a course participant.
- (c) In addition to the requirements in subsection (a), DWI Intervention Programs must collect and maintain the following required information on each course participant:
 - (1) participants' blood alcohol concentration at time of arrest (if known);
 - (2) the number of prior alcohol/drug-related arrests;

- (3) documentation that the agreement form, Alcoholics Anonymous attendance, family/significant other attendance, sessions with individual participants, and exit interview requirements were completed as outlined in the Texas DWI Intervention Administrator/Instructor Program Manual;
 - (4) each course participant's screening instrument;
 - (5) each course participant's screening instrument indicator code/score; and
 - (6) any referral recommendations made to a course participant.
- (d) In addition to the requirements in subsection (a), Alcohol Education Program for Minors must collect and maintain the following required information on each course participant:
- (1) the name of the referring judge;
 - (2) individual pre- and post-course test scores;
 - (3) average pre- and post-course test scores of course participants; and
 - (4) aggregate percent of knowledge increase between pre- and post-course test scores.
- (e) An Offender Education Program must retain each Course Roster and a copy of each issued Certificate of Completion for at least three years from the date of course completion.
- (f) All other Course Records, as defined under §90.10 and specified in this section, must be retained for a minimum of one year from the date of course completion.
- (g) The records in this section must be maintained at the Program's/Provider's headquarters.

90.52. Annual Reports. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) An Offender Education Program/Provider must file an annual report for the time period beginning September 1 of each year and ending August 31 of the following year.
- (b) An Offender Education Program/Provider must submit the annual report form to the department by September 15 of each year.
- (c) An Offender Education Program must submit the following items on the department-prescribed annual report form:
 - (1) total number of participants registered for each Program course during the annual reporting period;
 - (2) total number of participants successfully completing each Program course during the annual reporting period;
 - (3) total number of courses conducted during the annual reporting period;
 - (4) names of all certified Instructors employed by the Offender Education Program and number of courses conducted by each Instructor during the annual reporting period;
 - (5) driver's license numbers of all participants, or, in the absence of a driver's license number, the date of birth of each participant completing the course;
 - (6) average percent of knowledge increase across all courses conducted during the annual reporting period from pre-course tests to post-course tests administered (not required for DWI Intervention Programs); and

- (7) percent of total participants during the annual reporting period indicating significant substance abuse problems, based upon the numerical score on the approved screening instrument required to be administered (not required for Alcohol Education Program for Minors).

90.53. Confidentiality. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

All Offender Education Programs shall abide by and obtain any consent to disclosure required by applicable Federal and State laws regarding confidentiality of patient/client records including, as applicable and without limitation:

- (1) 42 United States Code §290dd-2, Confidentiality of Records;
- (2) 42 Code of Federal Regulations, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; and
- (3) Health and Safety Code, Chapter 611, Mental Health Records.

90.54. Discrimination Prohibited. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

Offender Education Programs shall be conducted without discrimination based upon the gender, race, religion, age, national or ethnic origin, or disability of the participant.

SUBCHAPTER F. FEES.

90.80. Fees. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) All fees paid to the department and any charges for program-related materials are non-refundable.
- (b) Fees will be assessed in accordance with the following fee schedule:
 - (1) Offender Education Program/Provider Certification Fees (paid to department):
 - (A) Initial application fee, including a new Program in a non-adjacent county to the headquarters--\$300 per Program;
 - (B) Renewal application fee--\$200 per Program;
 - (2) Branch Site Fees (paid to department):
 - (A) Initial application fee for a branch site (same or adjacent county to the headquarters)--\$5 per branch site;
 - (B) Branch site renewal application fee--\$5 per branch site;
 - (3) Moving/Change of Headquarters Fees (paid to department):
 - (A) Moving headquarters to a location outside of the county--\$25;
 - (B) Moving headquarters to a location in the same county--\$25;
 - (4) Instructor Certification Fees:
 - (A) initial application fee--\$0;
 - (B) renewal application fee--\$0;

- (5) Instructor Training Course Fees (paid to third party contractor)--\$425 per course;
 - (6) Continuing Education Seminar Fees (paid to third party contractor)--\$100 per certification per seminar; and
 - (7) Fees for Program Course Materials must be paid to the third party contractor.
- (c) A duplicate/replacement fee for a certification/certificate issued under this chapter is \$25.
 - (d) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
 - (e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

SUBCHAPTER G. ENFORCEMENT.

90.91. Complaints; Investigations. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) Upon verbal or written request from the department, an Offender Education Program, Administrator, Instructor, or any person associated with the Program, must cooperate with the department and furnish requested information concerning any department investigation of a complaint.
- (b) If the department is investigating a complaint, the Program/Provider, its Administrator, and Instructors must make available or provide to the department upon request at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, unless otherwise prohibited by law.

90.92. Administrative Penalties and Sanctions. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

If a person or entity violates any provision of Texas Occupations Code Chapter 51, the statutory provisions identified in §90.1, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51, the statutory provisions identified in §90.1, and any associated rules.

90.93. Enforcement Authority. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

The enforcement authority granted under Texas Occupations Code, Chapter 51, the statutory provisions identified in §90.1, and any associated rules may be used to enforce the statutory provisions identified in §90.1 and this chapter.

90.94. Additional Conduct Subject to Disciplinary Actions. *(New Section adopted effective November 1, 2017, 42 TexReg 4632)*

- (a) The department may deny, refuse to renew, or revoke the application or certification of an Offender Education Program or of an Instructor if the applicant for Program or Instructor certification, or the Program or Instructor certification holder, or a Program owner, Instructor, Administrator, or staff member:
 - (1) fails or has failed to comply with applicable requirements under this chapter or any other applicable statute or department rule;
 - (2) falsifies, submits or maintains, or has falsified, submitted, or maintained any substantially false, inaccurate, or incomplete documentation required under this chapter or related to the applicable Offender Education Program. This includes submission of any false or misleading statements in an application or other statement or correspondence to the department;
 - (3) engages or has engaged in conduct or promotes, permits, or has promoted or permitted one or

more participants to engage in conduct inconsistent with behaviors and principles taught or advocated under the curriculum prescribed under §90.40;

- (4) attends or has attended any Instructor training, instructs or is present at any class in an Offender Education Program, or performs duties related to an Offender Education Program while under the influence or impaired by alcohol or controlled substances, or provides one or more course participants with, or permits or encourages one or more course participants to use, any alcohol or controlled substance;
 - (5) engages or has engaged in conduct toward another that is violent or that constitutes abuse, neglect, or exploitation under applicable law; or
 - (6) engages or has engaged in conduct with respect to a participant that is inequitable, discriminatory, degrading, disrespectful, retaliatory, of a romantic or sexual nature, or which otherwise is or may be harmful to the health, safety, or welfare of a participant, to participants generally, or to the public.
- (b) If a Program/Provider or Instructor whose certification has been denied, initially or at renewal, or revoked thereafter reappplies, the Program/Provider or Instructor shall be required, with the application, to show that the facts and circumstances that led to revocation, denial, or a refusal to renew no longer serve as a basis for denial.